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REMARKS

Claims 1-43 are currently pending in the subject application and are presently under consideration. Claims 1 and 42 have been amended as shown at pages 2-9 of the Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

**I. Rejection of Claims 1-20, 22, 23, 25-39 and 41-43 Under 35 U.S.C. §102(b)**

Claims 1-20, 22, 23, 25-39 and 41-43 stand rejected under 35 U.S.C. §102(b) as being anticipated by Theimer *et al.* (US 5,812,865). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Theimer *et al.* does not teach each and every element of applicant's invention as recited in the subject claims.

A single prior art reference anticipates a patent claim only if it expressly or inherently describes each and every limitation set forth in the patent claim. *Trintec Industries, Inc., v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 U.S.P.Q.2D 1597 (Fed. Cir. 2002); *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The subject invention relates to analyzing data associated with parties involved in a communication attempt to identify the optimal one or more communication modalities to use in establishing the communication between the parties. For instance, if an employee wanted to contact a coworker, the invention could analyze the coworker's current attention state and preferred modality of communication to select the appropriate communication modality to establish, such as e-mail, voicemail, instant messaging, or a future meeting. Furthermore, applicant's claimed invention can determine an expected utility with establishing the communication based upon data associated with the contactor, contactee, communication modality and the communication. The expected utility can be used, for example, to rank potential communication modalities or to determine if establishing the communication at this time is beneficial to the contactee. Based on the determined expected utility, it may be appropriate to delay establishing the communication until the expected utility is greater. In

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particular, independent claim 1 (and similarly recited in independent claims 22, 39, 42 and 43) recites *the communication manager establishing a communication between the entities via at least one modality of the subset based at least upon determining an expected utility associated with the communication, the expected utility is based at least in part on the subset of the communication modalities and the first and second communication data sets.*

Theimer *et al.* does not teach or suggest the aforementioned novel aspects of applicant's invention as recited in the subject claims. The cited art discloses a system for establishing communication data paths between media devices based upon the context of users of the devices. Theimer *et al.* employs a method that examines user preference data that establishes rules for how the user should be contacted under various contexts. The system then employs various solutions to enforce the rules such as a rules engine or policy modules. The current context of the user will be examined when a communication attempt is made to the user and the appropriate rule will be employed to determine if the message should be delivered and the device to employ. Theimer *et al.* takes an entirely rules based approach to establishing communication where if conditions of the rule are satisfied, the rule is executed. Theimer *et al.* is silent regarding *determining an expected utility associated with the communication.* Therefore, Theimer *et al.* fails to teach or suggest that the communication manager establishing a communication between the entities via at least one modality of the subset based at least upon determining an expected utility associated with the communication, the expected utility is based at least in part on the subset of the communication modalities and the first and second communication data sets.

Moreover, independent claim 38 recites *determining one or more current expected utilities associated with a communication between the communicating parties based, at least in part, on current contactor data, current contactee data and current communication modality data ... determining one or more predicted expected utilities associated with a communication between the communicating parties based, at least in part, on predicted contactor data, predicted contactee data and predicted communication modality data ... and ranking the current expected utilities with the predicted expedited utilities, where the ranking of the predicted expected utilities is weighted by one or more costs associated with delaying the communication to a point in time associated with the predicted expected utility.* As discussed above, Theimer *et al.* is silent regarding determining an expected utility. The cited art does disclose that a communication may be delayed if none of the rules are satisfied. This is merely a reactive

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waiting strategy. The subject claim discloses a proactive approach whereby current state data associated with the contactor, contactee, and communication modalities is examined alongside predicted state data and delay cost factors to provide a ranking of current versus future communication that can be used to decide when communication should take place. Theimer *et al.* fails to disclose this novel feature of applicant's invention as recited in the subject claim.

In view of at least the foregoing discussion, applicant's representative respectfully submits that Theimer *et al.* fails to teach or suggest all limitations of applicant's invention as recited in independent claims 1 and 22, 38, 39, 42 and 43 (and claims that respectfully depend there from), and thus fails to anticipate the subject claimed invention. Accordingly, this rejection should be withdrawn.

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CONCLUSION

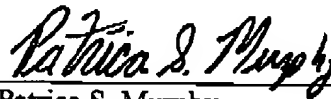
The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP221US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,

AMIN, TUROCY & CALVIN, LLP



Patricia S. Murphy  
Reg. No. 55,964

AMIN, TUROCY & CALVIN, LLP  
24<sup>TH</sup> Floor, National City Center  
1900 E. 9<sup>TH</sup> Street  
Cleveland, Ohio 44114  
Telephone (216) 696-8730  
Facsimile (216) 696-8731